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OCT 12 1982
ALEXANDER L. STEVAS,
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No. 81-2404

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

THE GOLD BONDHOLDERS PROTECTIVE COUNCIL, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA

On Petition For A Writ Of Certiorari To The United States Court Of Claims

REPLY OF PETITIONER TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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CONSTITUTION:

United States Constitution, Fourteenth Amendment, Section 4 2

MISCELLANEOUS:

Eder, "A Forgotten Section of the Fourteenth Amendment," 19 Cornell L. Q. 1 2

Record in *Perry* v. *United States*, 294 U.S. 330 2

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Petitioner does not agree that sovereign immunity was a factor in the *Perry* opinion. It seems clear that Mr. Perry would have won his case if he could have shown damages. He could not, but the present petitioner can.

1. The Argument Of The Government Makes A Mockery Of § 4 Of The Fourteenth Amendment

During the war years of 1862-1864 Congress issued fiat currency backed only by the credit of the Government which became known as "greenbacks". They dropped in value to about 35 cents on the dollar, and there was concern throughout the nation that they might not be redeemed.

It was against the backdrop of this historical situation that § 4 of the Fourteenth Amendment was approved. There appears to be little discussion in the reported cases or legal periodicals as to the intent of § 4.[1] In view of the then existing situation it seems reasonable to conclude that § 4 was designed to instill public confidence in the currency being circulated as greenbacks.

If the position of the Government in the case at bar is correct—namely, that sovereign immunity prevents § 4 from being effective—then the approval of § 4 by the amendment process was an idle gesture. In view of the clear language of § 4 it is certainly illogical to interpret it as being meaningless—which is what it is if its provisions are emasculated by the reach of sovereign immunity.

2. The Government Should Not Win Both Ways

Under its power to regulate currency the Government in 1934 repudiated its agreement to repay in gold the funds it had borrowed. It thereby kept for itself the increase in the value of gold that occurred in subsequent years.

On the other side of the coin, however, the Government refuses to recognize for tax purposes that the gold coins are currency of a fixed value. Thus, when a corporate dividend or a debt is paid in gold coins the Internal Revenue Service collects a tax on the market value of the gold

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[1] The legislative history is discussed in the Brief of Claimant, pp. 17-21, and Claimant's Reply to the Brief for the United States, pp. 6-9, of the Record in *Perry* v. *United States*, October Term, 1934, No. 532. See also: Eder, "A Forgotten Section of the Fourteenth Amendment," 19 Cornell L. Q. 1 (1933).

rather than its value as currency. *Cordner* v. *United States*, 671 F.2d 367 (9 Cir. 1982); *Joslin* v. *United States*, 666 F.2d 1306, 1307 (10 Cir. 1981); and *California Federal Life Insurance Co.* v. *Commissioner*, 76 T.C. 107, 111, affirmed 680 F.2d 85, 86 (9 Cir. 1982).

It is difficult to understand how the authority to regulate currency can allow the Government such a double benefit.

Petitioner respectfully submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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